

## **Annex G**

### **Summary of Changes to New Report Since Publication for Comment**

Below is a summary of the changes to the New Report since publication for comment, made in response to the comment letters received and the feedback received during our informal consultations.

In addition to the changes summarized below, we have made the following other changes to the New Report from the version published for comment:

- moved definitions from NI 45-106 into the New Report for ease of reference,
- removed the examples in the version of the New Report published for comment,
- made formatting, re-numbering and re-wording changes, and
- clarified some of the instructions.

#### **A. Removal of Information Requirements and Other Requirements**

##### **Filing a single report identifying all purchasers**

The current Form 45-106F1 requires issuers making a distribution in more than one jurisdiction of Canada to complete a single reporting identifying all purchasers, and file the report in each Canadian jurisdiction in which the distribution occurs. We have removed this requirement.

Notwithstanding this change, issuers may continue to satisfy their obligation to file the report by completing a single report identifying all purchasers, and filing it in each Canadian jurisdiction where the distribution occurs.

##### **Beneficial owners of fully managed accounts**

The Current Reports require information about the beneficial owner of the securities purchased. The New Report published for comment sought to clarify this existing requirement by providing additional guidance regarding the disclosure of the beneficial owners of fully managed accounts.

The New Report will no longer require information about beneficial owners of fully managed accounts. If a trust company, trust corporation or registered adviser described in paragraphs (p) or (q) of the definition of “accredited investor” in section 1.1 of NI 45-106 is deemed to be purchasing the securities as principal on behalf of a fully managed account, the New Report does not require information to be provided about the beneficial owner of the securities. Only information about the trust company, trust corporation or registered adviser is required.

We have made this change for a number of reasons, including:

- the feedback we received noting the burden placed on issuers to obtain this information,
- the prospectus exemption is available for a trust company, trust corporation or registered adviser that is deemed to be purchasing the securities as principal, which does not require the issuer to gather information about the beneficial owner, and
- we can obtain information about the beneficial owner through the trust company, trust corporation or adviser that is registered, if necessary.

### **Estimated amount of deferred compensation**

The New Report that was published for comment proposed that the estimated amount of any deferred compensation be provided as part of the requirement to provide details regarding compensation paid to a person by the issuer in connection with the distribution. We have removed this proposed requirement. The New Report only requires the issuer to indicate whether a person will or may receive any deferred compensation and to provide a description of the terms of the deferred compensation.

### **Shareholdings of directors, executive officers, promoters and control persons**

The New Report published for comment contemplated that certain issuers would be required to disclose the following information regarding their directors, executive officers, promoters and control persons:

- the number of voting securities of the issuer beneficially owned, or directly or indirectly controlled, on the distribution date, including any securities purchased under the distribution, and
- the total price paid for them.

We have removed this proposed requirement as a result of the feedback we received about the burden placed on issuers to obtain this information, the commercial sensitivity of publicly disclosing this information and privacy concerns.

The identities and locations of directors, executive officers and promoters of the issuer are required to be provided in the New Report, which is publicly available; however, their residential addresses must be provided in Schedule 2, which is not publicly available. If a promoter is not an individual, information about the directors and executive officers of the promoter is required.

The following issuers are excluded from the requirement to provide this information:

- investment fund issuers,
- reporting issuers and their wholly owned subsidiaries,
- foreign public issuers and their wholly owned subsidiaries, and
- issuers distributing eligible foreign securities only to permitted clients.

## **B. Revisions to Information Requirements**

### **Identities of control persons**

The New Report published for comment proposed that the identities of control persons of certain issuers be disclosed in the public part of the report, which is currently required in Form 45-106F6 filed with the BCSC.

We have moved the disclosure of the identities and residential addresses of control persons to Schedule 2, which is not publicly available. If a control person is not an individual, information about the control person's directors and executive officers is required.

We have made this change as a result of the feedback we received about the commercial sensitivity of publicly disclosing this information and privacy concerns. We believe that the identification of control persons is necessary to support our compliance functions, but that this information does not need to be

made public.

The following issuers are excluded from the requirement to provide this information:

- investment fund issuers,
- reporting issuers and their wholly owned subsidiaries,
- foreign public issuers and their wholly owned subsidiaries, and
- issuers distributing eligible foreign securities only to permitted clients.

## **Currency**

We have revised the instructions for the conversion of currency in the New Report to specify the exchange rate that should be used in the following scenarios:

- If the distribution date occurs on a date when the daily noon exchange rate of the Bank of Canada is not available, convert the foreign currency to Canadian dollars using the most recent Bank of Canada closing exchange rate available before the distribution date.
- Investment funds in continuous distribution should convert the foreign currency to Canadian dollars using the average daily noon exchange rate of the Bank of Canada for the distribution period covered by the report.

The Bank of Canada has announced that as of March 1, 2017, it will no longer publish two sets of exchanges rates (noon and closing) and will instead publish a single indicative exchange rate each day. We have revised the instructions in the New Report to specify that if this change takes place, foreign currency is to be converted using the single indicative exchange rate instead of the daily noon and closing exchange rates in each of the scenarios described in the instructions. For example, an investment fund in continuous distribution would convert the foreign currency to Canadian dollars using the average daily single indicative exchange rate for the distribution period covered by the report.

## **Issuer industry**

For issuers involved in certain investment activities that are required to disclose the areas of their primary asset holdings, we have added to the categories available to include “private companies”. This is to capture issuers that invest in other businesses, such as private equity funds.

## **Net proceeds to investment funds**

We have clarified the meaning of “net proceeds” as part of the requirement to provide the net proceeds to the investment fund by jurisdiction. In the New Report, “net proceeds” means the gross proceeds realized in the jurisdiction from the distributions for which the report is being filed, less the gross redemptions that occurred during the distribution period covered by the report.

## **C. Additional Requirements**

### **Attaching offering materials to the New Report (applicable in Ontario only)**

Consistent with the version published for comment, the New Report requires issuers to list all offering materials that are required to be filed or delivered in connection with a distribution made under the

securities legislation of Saskatchewan, Ontario, Québec, New Brunswick or Nova Scotia.

For example, issuers are required to list:

- Offering memoranda and any other documents (marketing materials) that are required to be filed under section 2.9 of NI 45-106.
- Offering memoranda that are voluntarily provided, and required to be delivered to the OSC under section 5.4 of OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*.
- Crowdfunding offering documents and any other distribution documents (term sheets and other materials summarizing information in a crowdfunding offering document) required to be filed under MI 45-108 *Crowdfunding*.

The New Report also includes a new requirement that applies in Ontario only. If the offering materials listed in the New Report are required to be filed or delivered to the OSC, electronic versions of those offering materials are to be attached to and submitted electronically with the New Report on the OSC's Electronic Filing Portal (if not previously filed with or delivered to the OSC). This allows the OSC to better track and reconcile exempt market filings for data collection purposes and to inform its compliance programs.

### **Format for filing Schedules 1 and 2**

The New Report published for comment proposed requiring that Schedules 1 and 2 be filed in the format of an Excel spreadsheet. The New Report requires that Excel spreadsheet to be in a form acceptable to the securities regulatory authority or regulator.

This means issuers are required to file Schedules 1 and 2 in .xlsx format using the Excel templates developed by the CSA. The Excel templates, which are being published concurrently with this Notice, are available on the website of each CSA member and at the links below.

- [Schedule 1 template](http://www.securities-administrators.ca/uploadedFiles/Schedule_1_Form_45-106F1_En.xlsx)<sup>1</sup>
- [Schedule 2 template](http://www.securities-administrators.ca/uploadedFiles/Schedule_2_Form_45-106F1_En.xlsx)<sup>2</sup>

The Excel templates will improve the consistency and comparability of the information collected through the schedules. We believe they will also assist filers in providing the information in a structured and organized manner.

## **D. Transition to the New Report**

### **Issuers other than investment funds filing annually**

All issuers, other than investment fund issuers filing reports annually, must use the New Report for distributions that occur on or after June 30, 2016, when the Amendments come into force. If an issuer completes a distribution before June 30, 2016, and the deadline to file the report occurs after June 30, 2016, the issuer must file the Current Report. If an issuer completes multiple distributions on dates that occur within a 10-day period beginning before and ending after June 30, 2016, the issuer may file either

<sup>1</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_1\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_1_Form_45-106F1_En.xlsx)

<sup>2</sup> [http://www.securities-administrators.ca/uploadedFiles/Schedule\\_2\\_Form\\_45-106F1\\_En.xlsx](http://www.securities-administrators.ca/uploadedFiles/Schedule_2_Form_45-106F1_En.xlsx)

the Current Report or the New Report to report such distributions.

**Investment fund issuers that file annually**

Investment funds relying on certain prospectus exemptions may file reports of exempt distribution annually, within 30 days after the end of the calendar year. We have provided a transition period to allow investment fund issuers that file annually to file either the Current Report or the New Report for distributions that occur before January 1, 2017. For distributions that occur on or after January 1, 2017, all investment fund issuers filing annually must file the New Report.

Annex H contains further information on the transition to the New Report.